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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. MORAN and JOHN P. McSWEENEY

Appeal 2009-001169
Application 09/747,691
Technology Center 2400

Decided: January 13, 2010

Before JAMES T. MOORE, *Vice Chief Administrative Patent Judge*,
LANCE LEONARD BARRY, ST. JOHN COURTENAY III, *Administrative
Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1, 2, 5-9, 11, and 13-21. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The invention at issue on appeal "provid[es] a web page to a call member." (Spec. 1.)

ILLUSTRATIVE CLAIM

1. A method of providing a web page to a telephone terminal employed by a member of a call, comprising the steps of:

(i) maintaining a record of an association between stored web pages and pre-specified information identifying one or more potential call members;

(ii) when said call is in progress, identifying a member of said call and selecting one of the stored web pages based on an association in said record between said selected one of the stored web pages and information identifying said member of said call; and

(iii) providing the selected web page to a telephone terminal employed by a call member.

PRIOR ART

Mustafa

U.S. 2002/0059378 A1

May 16, 2002

REJECTION

Claims 1, 2, 5-9, 11, and 13-21 stand rejected under 35 U.S.C. § 102(e) as anticipated by Mustafa.

CLAIMS 1, 2, 5-7, 13, 14, AND 16-18

37 C.F.R. § 41.37(c)(1)(vii) follows in pertinent part.

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a

single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

Here, the Appellants argue claims 1, 13, 16, and 17, which are subject to the same ground of rejection, as a group. (App. Br. 10-13.) Rather than arguing the rejection of claims 2, 5-7, 14, or 19 separately, they rely on their arguments for the group. Therefore, we select claim 1 as the sole claim on which to decide the appeal of claims 1, 2, 5-7, 13, 14, and 16-18.

ISSUE

The Examiner finds that Mustafa "associates the agents with the specific stored web pages of the system, paragraph 0032, lines 4-14." (Answer 9.) The Appellants argue that the reference "lists web sites, not individual web pages, and associates the web sites with automated systems rather than with pre-specified information identifying potential call members." (App. Br. 10.)

The Examiner makes the following additional findings.

In paragraph 0032, Mustafa teaches that the agent receives the profile number of the client once the request is accepted. This shows that the member of the call is not identified until the agent accepts the request for a call. Hence, Mustafa teaches that the call is in progress when the member of the call is identified.

(Answer 8.) The Appellants also argue that "[n]o call is in place at the time of identification of the client." (Reply Br. 7.)

The Examiner further finds that "Paragraph 0046 also teaches that the agent receives the same information being viewed by the client from the Web Server. This teaches that the web page is provided to a call member." (Answer 10.) The Appellants further argue that "[t]he web page is not selected from the record and provided to the client or agent as a result of such selection." (App. Br. 13.)

Therefore, the issue before us is whether the Appellants have shown error in the Examiner's findings that Mustafa discloses associating stored Web pages and information identifying at least one potential call member; selecting one of the Web pages based on one of the associations *when a call is in progress*; and providing the selected Web page to a call member.

LAW

"[A]nticipation is a question of fact." *In re Hyatt*, 211 F.3d 1367, 1371-72 (Fed. Cir. 2000) (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in *combination with his own knowledge of the particular art and be in possession of the invention.*'" *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re LeGrice*, 301 F.2d 929, 936 (CCPA 1962)). Furthermore, "[e]very patent application and reference relies to some extent upon knowledge of persons skilled in the art

to complement that [which is] disclosed." *In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (quoting *In re Wiggins*, 488 F.2d 538, 543 (CCPA 1973)). Those persons "must be presumed to know something" about the art "apart from what the references disclose." *In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962).

FINDINGS OF FACT ("FFS")

1. Mustafa "interactively provid[es] assistance and help to on-line clients by means of data, voice, and video communication. The scheme can facilitate real-time and on-line communication between a client and an agent." (Abstract, ll. 1-5.)

2. The reference's Figure 4 follows.

Serial #	Hyperlink address	Agent's IP address	Profile #	Reg. Name
1234567	http://www.xyz.com	a.b.c.d	123456	Mr. Smith
			123457	Mrs. Smith
	http://www.uvw.com	e.f.g.h	789012	Mr. Smith
	http://www.rst.com	m.n.o.p	345678	Mr. Smith
1234568				

FIG. 4

"FIG. 4 represents a typical database file containing plurality of profiles for the registered users authorized to receive on-line help for different designated Web sites." (§ 0020.)

3. Furthermore, "FIG. 4 shows some typical data fields being used in the query process by [a] Web server 75." (§ 0032.) More specifically, a

serial number field 111 contains the unique number (1234567) sent by the client system #1, 60. Under the said serial number 111 all the hyperlink addresses of the Web sites authorized for the said client system are listed. The IP addresses of the corresponding helping agent systems authorized to provide help for the said Web sites are also listed with the stored addresses.

(*Id.*)

4. *NetLingo* Web Page, netlingo.com (last visited Mar. 28, 2008) states that "[t]he term 'Web page' also refers to an entire Web site." (Ans. 8).

5. "Once an agent becomes available the software at the agent system 70" (Mustafa, ¶ 0042), "the agent and the client systems display the exact same Web page which is downloaded from the Web server 73 using the complete hyperlink address." (*Id.*) More specifically, "FIG. 8 shows a typical view of the agent system 70 which displays the same Web page contents 104 as the client system 60 does during an on-line help session." (*Id.*, ¶ 0045.)

6. We find that persons skilled in the art would have known that the hyperlink addresses point to Web pages.

ANALYSIS

Mustafa features a database containing profiles for registered users authorized to receive on-line help for different designated Web sites. (FF 2.) The profile associates serial numbers of client systems with hyperlink addresses and IP addresses of agent systems. (FF 2-3.) Persons skilled in the art would have known that the hyperlink addresses point to Web pages.

(FF6). Such persons would also have known, moreover, that the address "http://www.foxnews.com/" identifies both a Web site of the Fox news agency as well as a specific Web page. *NetLingo* further supports this finding by providing evidence that the term Web page can also refer to a Web site. (FF 4.) Because the reference's profiles map Web pages to associate serial numbers of client systems and IP addresses of agent systems so that the client systems and agent systems can communicate (FF 1), we find no error in the Examiner's finding that Mustafa's profiles associate Web pages with information identifying at least one potential call member.

A client system and an agent system communicate during an on-line call for help. (FF 1.) During this call, Mustafa downloads the same Web page that the client is viewing to the agent system (FF 5), which is a member of the communication, i.e., the call. Because the on-line help session was established via use of the aforementioned profiles, we agree with the Examiner that the reference selects one of the Web pages based on one of the associations therein. Because the downloading occurs during the call for on-line help, we also agree with the Examiner's finding that the Web page is selected when a call is in progress.

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown no error in the Examiner's findings that Mustafa discloses associating stored Web pages and information identifying at least one potential call member; selecting one of the Web pages based on one of

the associations *when a call is in progress*; and providing the selected Web page to a call member.

CLAIMS 8, 9, 11, 15, 19, AND 20

The Examiner includes specific findings and explanations about how Mustafa discloses the limitations of claims 8, 9, 11, 15, 19, and 20; many of these explanations include evidence of what persons skilled in the art know to complement that which is disclosed by the reference. (Answer 10-13.) The Appellants' Reply Brief fails to address these findings and explanations. Based on this omission, we conclude that the Appellants have shown no error in the Examiner's findings.

CLAIM 21

The Examiner finds that "Mustafa teaches . . . sending information about the telephone terminal to the source (0031, 0032, 0053)." (Answer 7.) The Appellants argue that the Examiner has not "indicat[ed] where these paragraphs suggest sending information about a telephone terminal to the source having access to the web pages." (App. Br. 16.)

ISSUE

Therefore, the issue before us is whether the Appellants have shown error in the Examiner's finding that Mustafa discloses sending information about a telephone terminal to a source having access to Web pages.

FINDING OF FACT

7. Mustafa "forwards the [client systems'] serial number to the Web server 75 Upon receiving this unique serial number the Web server 75 queries its database 69 to determine which Web site addresses have been registered under this unique serial number. (§ 0031.)

ANALYSIS

Paragraphs 0031 and 0032 of Mustafa describe the forwarding of a client system's serial number to a Web server 75. (FF 7.) The Examiner does not show, however, that the Web server 75 has access to Web pages. To the contrary, it appears this particular Web server instead accesses the aforementioned database containing profiles for registered users authorized to receive on-line help for different designated Web sites. (FF 2-3.)

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown error in the Examiner's finding that Mustafa discloses sending information about a telephone terminal to a source having access to Web pages.

DECISION

We affirm the rejection of claims 1, 2, 5-9, 11, and 13-20 but reverse the rejection of claim 21.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

Appeal 2009-001169
Application 09/747,691

AFFIRMED-IN-PART

msc

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